

Message Text

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C O N F I D E N T I A L EC BRUSSELS 01981

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FOR THE SECRETARY

E.O. 11652: GDS

TAGS: EEC, FT

SUBJECT: PRESIDENTIAL-CONGRESSIONAL BALANCE AND STEEL IMPORTS

1. THERE IS AN OFFBEAT POLITICAL PERSPECTIVE ON THE PENDING PRESIDENTIAL DECISION CONCERNING POSSIBLE RESTRICTION OF SPECIALTY STEEL IMPORTS INTO THE UNITED STATES TO WHICH I WOULD DRAW YOUR PERSONAL ATTENTION. QUITE APART FROM THE WEAKNESS OF THE SUBSTANTIVE CASE MADE BY THE INTERNATIONAL TRADE COMMISSION IN RECOMMENDING QUOTAS, THE PRIMA FACIE DANGER THAN ANY RESTRICTION ACTION WOULD BE INTERPRETED AS UNDERMINING THE PRESIDENTIAL PLEDGE AT RAMBOULLET TO FIGHT PROTECTIONISM, AND THE REAL DANGER THAT RESTRICTIONISM ON OUR PART WOULD BE USED BY THE TUC IN BRITAIN TO PRESSURE WILSON TO IMPOSE FAR-REACHING IMPORT CONTROLS, THERE IS A DOMESTIC POLITICAL DIMENSION FOR US WHICH I THINK MAY NOT HAVE BEEN THOUGHT THROUGH. DEPTTEL 045272 INDICATES THAT WHEN PRESIDENT ORTOLI OF THE EUROPEAN COMMISSION EXPRESSED HIS DEEP CONCERN OVER PROTECTIONIST PRESSURES IN THE US, WE CITED IN REPLY THE "RISK OF A CONGRESSIONAL OVERRIDE IF OUR ACTIONS ARE NOT BASED ON A SOUND ASSESSMENT OF DOMESTIC AS WELL AS INTERNATIONAL CONSIDERATIONS."

2. THERE IS, OF COURSE, A RISK HERE AND IT IS HARDLY FOR ME TO MAKE DOMESTIC POLITICAL JUDGMENTS. HOWEVER, IN THE LARGER CONTINUING EFFORT TO RE-ESTABLISH BALANCE BETWEEN THE CONGRESS

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AND THE EXECUTIVE THERE ARE, I BELIEVE, GOOD REASONS FOR

RUNNING THE RISK OF A CONGRESSIONAL OVERRIDE. IN THE FIRST PLACE, WERE QUOTAS TO BE ESTABLISHED AS A RESULT OF CONGRESSIONAL DECISION WE COULD ANTICIPATE RETALIATORY ACTION WHICH WOULD BE BAD IN TERMS OF SHORT RANGE COMMERCIAL POLICY AND FOREIGN POLICY CONSIDERATIONS BUT WHICH MIGHT HELP IMPRESS UPON CONGRESS THE DANGERS OF CONGRESSIONAL INTERVENTION IN THE FOREIGN POLICY FIELD. MORE IMPORTANTLY BY FAR IS THE POSSIBILITY THAT THE COURTS WOULD SHORTLY DECIDE THAT CONGRESSIONAL ACTION IN IMPOSING QUOTAS BY A SIMPLE MAJORITY OF BOTH HOUSES WAS UNCONSTITUTIONAL. TWO AMERICAN LAWYERS HERE SUPPORT THE THESIS THAT THE PROVISIONS OF THE TRADE ACT WHICH IN EFFECT TAKE AWAY THE PRESIDENT'S LEGISLATIVE VETO MAY BE UNCONSTITUTIONAL. AS A MINIMUM I BELIEVE THE ISSUE SHOULD BE EXAMINED BY CONSTITUTION LAWYERS AT HOME. IF IN FACT THE LANGUAGE OF THE TRADE ACT IS UNCONSTITUTIONAL WHICH PERMITS CONGRESS WHEN THERE IS A RECOMMENDATION FOR QUOTAS BY THE ITC TO OVERRIDE THE PRESIDENT'S JUDGMENT BY A SIMPLE MAJORITY RATHER THAN THE NORMALLY REQUIRED TWO-THIRDS MAJORITY, WOULD THERE NOT BE MUCH TO BE SAID FOR RUNNING THE RISK OF A CONGRESSIONAL OVERRIDE? IF CONGRESS DOES NOT OVERRIDE, PROTECTIONISM HAS BEEN DEALT AN EFFECTIVE IMMEDIATE BLOW AND IF CONGRESS DOES OVERRIDE THE COURTS MIGHT WELL RESTORE AN IMPORTANT CONSTITUTIONAL PREROGATIVE OF THE PRESIDENT. THIS WOULD BE A LONG-TERM GAIN WORTH A SHORT-TERM RISK.

3. FINALLY, IF WE MUST MAKE CONCESSIONS TO DOMESTIC PROTECTIONIST FORCES, IN MY JUDGMENT, SHOES NOT STEEL IS THE AREA IN WHICH TO DO SO. HINTON

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